

NOT FOR PUBLICATION

JAN 24 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHONGSOON DEJANU,

Defendant - Appellant.

No. 06-10385

D.C. No. CR-00-00006-WHA

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
William H. Alsup, District Judge, Presiding

Submitted January 14, 2008\*\*

Before: HALL, O'SCANLAIN, and PAEZ, Circuit Judges.

Phongsoon Dejanu appeals from the district court's order, following a limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), concluding that it would not have imposed a materially different

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

sentence had it known that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Dejanu contends that his sentence must be reversed because the district court failed to consider the “parsimony principle,” a consideration in 18 U.S.C. § 3553(a), when it declined to order full re-sentencing. This contention is not reviewable because the district court determined, on remand, that it would not have imposed a materially different sentence under an advisory Guidelines system. *See United States v. Combs*, 470 F.3d 1294, 1296-97 (9th Cir. 2006).

Dejanu also contends that the district court erred by declining to consider evidence that his health had deteriorated since his original sentencing. Because the limited *Ameline* remand only requires that the district court determine what it would have done “at the time” of the original sentencing, the district court did not have to consider the additional evidence. *See Ameline*, 409 F.3d 1073 at 1083.

**AFFIRMED.**